

FILED 06 DEC 20 17:05USDC-ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**JOHN HARPER and LANA KUDINA,**

**06-CV-1457-HU**

**Plaintiffs,**

**ORDER**

**v.**

**COLDWELL BANKER BARBARA SUE  
SEAL PROPERTIES and PYRAMID  
HOMES INCORPORATED,**

**Defendants.**

**JOHN HARPER  
LANA KUDINA**  
P.O. Box 16566  
Portland, OR 97292

*Plaintiffs, Pro Se*

**MARTHA J. HODGKINSON**  
Hoffman, Hart & Wagner, LLP  
Twentieth Floor  
1000 S.W. Broadway  
Portland, OR 97205

Attorneys for Defendant Coldwell Banker Barbara Sue  
Seal Properties

**ALBERT F. SCHLOTFELDT**

Duggan, Schlotfeldt & Welch, PLLC  
900 Washington Street, Suite 1020  
P.O. Box 570  
Vancouver, WA 98666-0570

Attorneys for Defendant Pyramid Homes Incorporated

**BROWN, Judge.**

Magistrate Judge Dennis James Hubel issued Findings and Recommendation (#18) on October 30, 2006, in which he recommended the Court grant Defendants' Motions to Remand (#7, #10), grant Defendants' request for attorneys' fees and costs, and deny Plaintiffs' Motion for Sanctions (#13) if the district court adopts the Findings and Recommendation. Plaintiffs filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Mach., Inc.*, 656 F.2d 1309, 1313 (9<sup>th</sup> Cir. 1981), cert. denied, 455 U.S. 920 (1982).

This Court has carefully considered Plaintiffs' Objections and concludes they do not provide a basis to modify the Findings

and Recommendation. This Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

On October 30, 2006, Plaintiffs filed a Second Amended Complaint without leave of Court, without Defendants' consent, and after Defendants served a responsive pleading. See Fed. R. Civ. P. 15(a). The Court, therefore, strikes the Second Amended Complaint.

Even if the Court did not strike the Second Amended Complaint, it would be futile for Plaintiffs to amend their Complaint in the manner set forth in their proposed Second Amended Complaint because it does not cure the defects in the removal procedure identified in the Findings and Recommendation. See *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1393 (9<sup>th</sup> Cir. 1997). Accordingly, the Court also concludes Plaintiffs' "proposed" Second Amended Complaint does not provide a basis to modify the Findings and Recommendation.

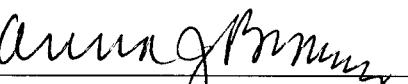
#### CONCLUSION

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#18). Accordingly, the Court **GRANTS** Defendants' Motions to Remand (#7, #10), **GRANTS** Defendants' request for attorneys' fees and costs, and **DENIES** Plaintiffs' Motion for

Sanctions (#13). The Court also strikes Plaintiff's "proposed" Second Amended Complaint.

IT IS SO ORDERED.

DATED this 19<sup>th</sup> day of December, 2006.

  
ANNA J. BROWN  
United States District Judge